

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



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Chief Deputy

June 2, 2010

**REQUEST BY THE ATTORNEY GENERAL OF THE STATE OF UTAH
FOR PROPOSALS TO SERVE AS BOND COUNSEL OR DISCLOSURE
COUNSEL FOR GENERAL OBLIGATION BONDS AND REVENUE BONDS
TO BE ISSUED BY THE UTAH STATE BONDING COMMISSION DURING
2010 AND 2011**

**PLEASE NOTE: WRITTEN PROPOSALS MUST BE RECEIVED NO LATER THAN
12:00 P.M. (NOON) ON TUESDAY, JUNE 15, 2010.**

To the Law Firm(s) or Attorney(s) Addressed:

The Attorney General is requesting proposals from attorneys and firms interested in serving as bond counsel or disclosure counsel for general obligation bonds and revenue bonds issued by the Utah State Bonding Commission ("SBC") during calendar years 2010 and 2011, as more fully described below under "Nature of the Appointments."

In response to this request for proposals ("RFP"), the Attorney General will consider proposals from the following: an individual attorney; two or more individual attorneys in association with each other; a law firm; two or more law firms in association with each other; or an individual attorney or two or more attorneys in association with a law firm or more than one law firm. For ease of reference, the term "firm" or "firms" will hereinafter refer to each of these groupings.

OVERVIEW

The Utah State Treasurer ("State Treasurer"), as Secretary of the SBC, has asked the Attorney General to appoint bond counsel and disclosure counsel to assist the SBC with the issuance by the SBC of general obligation bonds and revenue bonds. Pursuant to that request, the Attorney General's office has prepared this RFP to enable the Attorney General to appoint bond counsel and disclosure counsel to serve in those capacities for general obligation bonds and revenue bonds issued by the SBC for the period commencing immediately upon appointment and continuing through December 31, 2011.

General Obligation Bonds

Before 2005, the State of Utah, its departments, agencies, committees, commissions, boards and similar entities (the State of Utah, its departments, agencies, committees, commissions, boards and similar entities, are sometimes collectively referred to herein as the "State") had issued general obligation bonds at least once in virtually every year for the past several decades. In 2005, the General Session of the Utah Legislature chose not to authorize any general obligation bonds, and thus no general obligation bonds were issued in 2005. General obligation bonds were also not issued in 2006 or 2008 for various reasons. In addition, the 2010 General Session of the Utah Legislature did not authorize the issuance of any new general obligation bonds by the SBC. However, as stated in the Official Statement for the State of Utah \$490,410,000 General Obligation Bonds, Series 2009C, and \$491,760,000 General Obligation Bonds, Series 2009D (Federally Taxable-Issuer Subsidy-Build America Bonds), which were issued by the SBC in September of 2009, under "DEBT STRUCTURE OF THE STATE OF UTAH – Legal Borrowing Authority – Authorized General Obligation Bonds and Future General Obligation Bonds Issuance":

As of September 29, 2009, the State has approximately \$2,198,118,400 aggregate principal amount of additional authorized and unissued general obligation bonds, the proceeds of which bonds, when issued, will be used by the Utah Department of Transportation and DFCM [the Utah Division of Facilities Construction and Management of the Utah Department of Administrative Services] for various capital projects. The authorizations consist of:

\$1,586,095,000 (all of which is exempt from statutory debt limit calculations) for highway projects and \$10,000,000 for higher education and building projects from 2009;

\$42,500,000 for development projects from 2008;

\$557,900,000 (all of which is exempt from statutory debt limit calculations) for highway projects from 2007;

\$1,623,400 for capital projects from 2004.

Based on the State's highway and transportation needs, the State anticipates that it will issue a portion of its authorized and unissued general obligation bonds annually over the next five years.

The SBC anticipates the State will need to issue around \$1 billion of general obligation bonds in the Fall of 2010 to meet highway needs and other obligations.

Revenue Bonds

In addition, Part 4 of the State Financing Consolidation Act (Title 63B, Chapter 1b, Utah Code Ann.) authorizes the SBC to issue revenue bonds to provide funds for state agencies. Revenue bonds and other evidences of indebtedness held by an agency may be pledged to pay the debt service on the revenue bonds issued by the SBC. (See Utah Code Ann. § § 63B-1b-401 and -402.)

In early 2010, the SBC issued its first revenue bonds. The proceeds of the \$65,800,000 State of Utah Recapitalization Revenue Bonds (\$18,450,000 Federally Taxable Series 2010A, \$16,125,000 Series 2010B, and \$31,225,000 Federally Taxable Series 2010C (Issuer Subsidy-Build America Bonds)) were mainly used by the SBC to acquire an interest in bonds, notes, contracts and other evidences of indebtedness, including agreements representing loans made by the Utah Board of Water Resources ("BWR") in order provide the BWR with funds to make additional loans under certain revolving loan programs administered by the BWR.

The Utah Department of Agriculture ("UDA") has now approached the SBC about issuing revenue bonds to provide the UDA with funds to make loans under programs administered by the UDA. Similar to the procedure for issuing revenue bonds to provide funds to the BWR, the SBC would issue revenue bonds to acquire an interest in bonds and other evidences of debt currently held by the UDA, with the proceeds from the bonds and other evidences of indebtedness acquired from the UDA being pledged to pay the revenue bonds issued by the SBC. The SBC expects to be issuing \$1-2 million of revenue bonds for this purpose.

Nonetheless, despite these expectations, there is no absolute guaranty the SBC will issue any general obligation bonds during calendar years 2010 or 2011. Therefore, firms submitting proposals, and the firms ultimately appointed as bond counsel and disclosure counsel under this RFP, must understand that the appointment of bond counsel and disclosure counsel by the Attorney General does not in any way guaranty that any bonds will be issued during the two-year period of the firms' appointments.

NATURE OF THE APPOINTMENTS

Except as otherwise noted in this RFP, bond counsel and disclosure counsel appointed under this RFP will serve in those capacities for: (a) any general obligation bonds authorized by the Legislature in calendar years 2010 and 2011, which bonds are actually issued by the SBC during calendar years 2010 or 2011; (b) any general obligation bonds authorized prior to calendar year 2010 which have not yet been issued, but which are issued by the SBC during calendar years 2010 or 2011; (c) any general obligation bonds issued by the SBC during calendar years 2010 or 2011 to refund or redeem bonds or other debt instruments previously issued by the SBC; and (d) any revenue bonds issued by the SBC during 2010 or 2011.

If the State decides to issue variable rate demand obligations (“VRDO’s”), the appointments of bond counsel and disclosure counsel under this RFP may include serving in those capacities for the issuance of VRDO’s, as well. The determination as to whether bond counsel and disclosure counsel appointed under this RFP serve in those capacities for the issuance of VRDO’s will be made at the sole discretion of the Attorney General, although the Attorney General will consult with appropriate State officials before making such a determination, and after conferring with bond counsel and disclosure counsel appointed under this RFP. If VRDO’s are issued, and bond counsel and disclosure counsel under this RFP are appointed to serve in those capacities for the issuance of VRDO’s, the Attorney General will negotiate the fee with bond counsel and disclosure counsel.

The appointments under this RFP do not include services as bond counsel or disclosure counsel for a number of types of debt instruments that may be issued by the State, including, but not limited to: (1) any tax and revenue anticipation notes issued by the State Treasurer; (2) any revenue bonds or lease revenue bonds, or any bonds or other debt instruments (such as certificates of participation, etc.) not issued by the SBC (such as lease revenue bonds issued by the State Building Ownership Authority); (3) any bonds or other debt instruments issued by the State Board of Regents, any of the State’s colleges or universities, or the Utah Higher Education Assistance Authority; (5) any debt instruments issued by the Utah Housing Finance Agency; or (6) any bond anticipation notes (“BAN’s” issued by the State Treasurer. Should a question arise as to whether the firms appointed under this RFP will serve as bond counsel and disclosure counsel on a particular bond issue, or whether other firms appointed under a separate RFP will serve in those capacities, the Attorney General alone will make the determination, after consulting with appropriate State officials.

Bond counsel will also be required to provide up to fifty (50) hours of legal advice per calendar year¹ to State officials, including persons in both the executive and legislative branches of government, on bond issues. While the intent is that these services would primarily relate to questions on general obligation bonds, these advisory services could include responding to general inquiries about financing mechanisms other than general obligation bonds. Areas in which such advice may be needed include, but are not limited to, drafting and/or reviewing legislation, and advising on laws and other factors impacting debt issued by the State. Bond counsel will provide this legal advice without charge to the State, except to the extent the firm has built remuneration for these services into the fees the firm will receive if bonds are issued (see paragraph B. below on fees under “**Required Contents of Proposals to Serve as Bond Counsel**”). Such advice shall be rendered when authorized by the State Treasurer or the Attorney General.

¹ The the fifty hours of legal advice for calendar year 2011 might actually begin in late 2010, if bond counsel is called upon in late 2010 for advice for general obligation bond matters to be considered by the 2011 General Session of the Legislature.

In addition, due to the Federal arbitrage laws and the State's generally conservative approach on debt, if general obligation bonds are authorized by the Legislature during 2010 and 2011, the SBC will likely not issue the entire amount of general obligation bonds authorized for a project at one time if construction of the project is expected to span more than two years.

APPOINTMENT BY ATTORNEY GENERAL

The Attorney General is appointing bond counsel and disclosure counsel under this RFP pursuant to Utah Code Ann. § 67-5-5 (West 2009). The procedures the Attorney General will follow in making the appointment are set forth in Utah Admin. Code R. 105-1 (2010).

TERM OF APPOINTMENT

Bond counsel and disclosure counsel appointed under this RFP will serve in those capacities for general obligation bonds issued by the SBC effective immediately upon appointment, and during calendar years 2010 and 2011. The appointments of bond counsel and disclosure counsel under this RFP terminate at midnight on December 31, 2011. If work must be started during 2011 on general obligation bonds that will be sold (*i.e.*, an underwriter's bid accepted by the SBC) before January 1, 2012, bond counsel and disclosure counsel appointed under this RFP will serve as bond counsel and disclosure counsel for any such bond issue, even if the closing takes place after December 31, 2011. If work must be started during 2011 on general obligation bonds that will not be sold (*i.e.*, an underwriter's bid accepted by the SBC) before January 1, 2012, bond counsel and disclosure counsel appointed under this RFP will not serve as bond counsel and disclosure counsel for that bond issue. Rather, the Attorney General will prepare a new RFP, and bond counsel and disclosure counsel appointed under that new RFP will serve in those capacities for the general obligation bonds that will be sold after December 31, 2011. However, the Attorney General reserves the right to extend the appointments of the firms appointed under this RFP (with the consent of the firms appointed) if bond counsel and disclosure counsel for the issuance of general obligation bonds by the SBC have not yet been appointed for the period beginning January 1, 2012, or the determination is made that it would be in the best interests of the State to extend the appointments, and the firms appointed under this RFP agree to extend the appointments, with such determinations being made by the Attorney General alone, after consulting with appropriate State officials.

RESPONSIBILITIES OF BOND COUNSEL

Bond counsel will have all responsibilities, and will provide all services, normally associated with bond counsel for general obligation bond issues and revenue bond issues. These services will likely include, but will not be limited to: developing necessary legal documentation; assisting with the issuance and sale of the bonds; issuing of an opinion as to the legality and validity of the bonds; issuing of an opinion regarding the tax-exempt status of the bonds; assisting, in a limited manner, in the preparation and development of an official statement for the bond issues; and attending to the details of the closings and printing of the bonds, as

required. Bond counsel will also be expected to attend all meetings required of them associated with a bond issue.

In addition to performing the functions usually associated with bond counsel, bond counsel will provide State officials with up to fifty (50) hours of legal advice on matters related to general obligation bonds, as explained above under "Nature of the Appointments."

REQUIRED CONTENTS OF PROPOSALS TO SERVE AS BOND COUNSEL

Proposals to serve as bond counsel must address the following criteria, which the Attorney General will use to select bond counsel:

- A. The ability of the firm to complete bonding transactions in a timely, professional manner. In evaluating this factor, the Attorney General will consider each of the following:
 1. The experience of the firm as bond counsel or disclosure counsel on general obligation bond and revenue bond transactions. (If the firm has recently submitted to us a proposal on another bond or note issue, the firm may refer to and incorporate any parts of that proposal into this proposal, updating information where necessary.)
 2. The professional resources available to assist with bond issues, and the names and qualifications of the principal attorney(s) who would be assigned to work on the bond issue. At least one attorney who will participate must be a member in good standing of the Utah State Bar, and at least one attorney must be listed among the attorneys in the "Municipal Bond Attorney's Section" of The Bond Buyers' Municipal Marketplace (the "Red Book"). The proposal must state which attorney(s) would actually be providing most of the services. The firm may associate with other firms or attorneys to provide services as bond counsel, but primary use of local attorneys will be a positive element in evaluating this factor.
 3. The availability of the firm to complete work on the bond issues in a timely and professional manner.
- B. The fee structure and estimated costs for the legal services provided. The proposal must state whether the firm would expect to receive the proposed fee or any part of the proposed fee, or to be reimbursed for costs incurred, in the event bonds are not issued. PREFERENCE WILL BE GIVEN FOR PROPOSED FEES BASED UPON A SET FEE, A FEE SCHEDULE BASED UPON THE DOLLAR AMOUNT OF BONDS ISSUED, HOURLY RATES WITH A CEILING, OR SOME OTHER METHOD BY WHICH THE ISSUER WILL BE ABLE TO ASCERTAIN AT THE OUTSET OF A BOND

ISSUE WHAT THE LEGAL FEES FOR BOND COUNSEL WILL BE. The proposal must also state whether there would be a charge for future legal services incidental to the issuance of the bonds, and if so, what type of fee would be charged (e.g., hourly, no charge for first X number of hours, etc.).

In preparing its fee proposal, the firm should assume the following:

1. For general obligation bonds to be issued by the SBC:

- a. All bonds will be sold via competitive bid.
- b. In addition to performing the functions usually associated with bond counsel, bond counsel will provide State officials with up to fifty (50) hours of legal advice on matters related to general obligation bonds, as explained above under "Nature of Appointments."
- c. In 2010, the SBC determines that during 2010, in one bond issue, it will issue part of the general obligation bonds authorized prior to 2010 but not issued. Bond counsel performs the services customarily performed by bond counsel to enable the SBC to issue the general obligation bonds. In providing services as bond counsel for the issuance of these bonds, bond counsel encounters no unusual circumstances which would justify an adjustment in fees.

Bond counsel is consulted by State officials for a total of fifty (50) hours during calendar year 2010 (including consultation with persons in the Legislative branch during the 2010 General Session and special sessions of the Legislature, and consultation with State officials between bond issues).

- d. The 2011 General Session of the Legislature approves the issuance of a certain amount of general obligation bonds for new projects. The SBC determines that during 2011, in one bond issue, it will issue part of the bonds authorized prior to 2010 but not issued, and part of the bonds authorized by the 2011 Legislature. Bond counsel performs the services customarily performed by bond counsel to enable the SBC to issue the general obligation bonds. In providing services as bond counsel for the issuance of these bonds, bond counsel encounters no unusual circumstances which would justify an adjustment in fees.

Bond counsel is consulted by State officials for a total of fifty (50) hours during calendar 2011 (including consultation with persons in the Legislative branch during the 2011 General Session and special

sessions of the Legislature, and consultation with State officials between bond issues).

- e. For each bond issue, there are no unusual real estate matters or other unusual circumstances which must be considered.

GIVEN THESE ASSUMPTIONS, PLEASE INDICATE WHAT THE FIRM'S FEES AS BOND COUNSEL WOULD BE IN 2010, AND IN 2011 IF THE FIRM'S FEES WOULD DIFFER IN 2011 FROM WHAT THEY WOULD BE IN 2010, FOR BOND ISSUES, IN:

- (1) \$5 MILLION INCREMENTS FROM \$5 MILLION TO \$50 MILLION;
- (2) \$10 MILLION INCREMENTS FROM \$50 MILLION TO \$100 MILLION;
- (3) \$50 MILLION INCREMENTS FROM \$150 MILLION TO \$500 MILLION; AND
- (4) \$100 MILLION INCREMENTS FROM \$500 MILLION TO \$1.5 BILLION.

AS THE FIRM PREPARES ITS PROPOSAL, PLEASE NOTE NO FUNDS ARE AVAILABLE FROM THE STATE, THE ATTORNEY GENERAL'S OFFICE, OR THE SBC, FOR PAYMENT OF FEES OR COSTS IF BONDS ARE NOT ISSUED, NOR DO ANY OF THESE ENTITIES HAVE FUNDS TO PAY FOR CONSULTATION TIME IF BONDS ARE NOT ISSUED. Therefore, if the firm intends to be compensated for consultation services during the legislative session and between bond issues, the firm's proposal should make provision for compensation for these consultation services within the firm's proposed fee for the issuance of the general obligation bonds. For example, if the firm would ordinarily propose a fee of \$1 for each \$1000 of bonds issued, and believes it should receive \$300 per hour for consultation services, the firm's proposed fee might be "\$15,000 (the \$300 per hour for fifty (50) hours of consultation) plus \$1 per \$1000 of bonds issued". The Attorney General, in consultation with the appropriate State officials, will allow for adjustments in bond counsel fees, if there are other unusual circumstances, and if funds are available from the bond issue(s). If it appears the number of hours of consultation will significantly exceeds fifty (50) hours, the Attorney General will negotiate with the firm as to whether the firm should continue to provide these consultation services, and, if so, what the fee arrangements will be.

Please also indicate any other factors that would affect the firm's proposed fees under the circumstances given above, e.g., "If there is a second or third bond issue

during a year, our fees would be adjusted as follows: . . .". Do not indicate factors such as, "If the sale is negotiated, rather than competitively bid, our fee will adjust as follows: . . .," or "If we need to provide more than fifty (50) hours of consultation in a year, our fee will be . . .". If the sale is a negotiated sale, or more than fifty (50) hours of consultation per year are needed, the Attorney General's office will negotiate the fee with bond counsel.

2. For revenue bonds to be issued by the SBC:

The fee structure and estimated costs for the legal services provided for \$1-2 M of revenue bonds. The firm may, if it wishes, break down its fee into increments, e.g., \$25,000 for \$0-1 million, \$35,000 for amounts above \$1 million up to \$1.5 million, and \$45,000 for amounts above \$1.5 million up to \$2 million.

The proposal must state whether the firm would expect to receive the proposed fee or any part of the proposed fee, or to be reimbursed for costs incurred, in the event bonds are not issued. PREFERENCE WILL BE GIVEN FOR PROPOSED FEES BASED UPON A FIXED FEE, A FEE SCHEDULE BASED UPON THE DOLLAR AMOUNT OF BONDS ISSUED, HOURLY RATES WITH A CEILING, OR SOME OTHER METHOD BY WHICH THE ISSUER WILL BE ABLE TO ASCERTAIN AT THE OUTSET OF A BOND ISSUE WHAT THE LEGAL FEES FOR BOND COUNSEL WILL BE. The proposal must also state whether there would be a charge for future legal services incidental to the issuance of the bonds, and if so, what type of fee would be charged (e.g., hourly, no charge for first X number of hours, etc.).

AS YOU PREPARE YOUR PROPOSAL, PLEASE NOTE THAT NO FUNDS ARE AVAILABLE FROM THE STATE OF UTAH, THE ATTORNEY GENERAL'S OFFICE, OR THE SBC FOR PAYMENT OF FEES OR COSTS IF BONDS ARE NOT ISSUED. The Attorney General, in consultation with the appropriate officials from the SBC, will allow for adjustments in bond counsel fees, if there are unusual or unforeseen circumstances that require significant additional services by bond counsel, and if funds are available from the bond issue.

- C. The number of appointments of, and the total fees received by, the firm in the last three (3) years for bonding work (including note projects) on behalf of the State, the State Board of Regents, any of the State's colleges or universities, or the Utah Higher Education Assistance Authority.

RESPONSIBILITIES OF DISCLOSURE COUNSEL

Disclosure counsel will have all responsibilities, and will provide all services, normally associated with disclosure counsel for general obligation bond issues and revenue bond issues.

These responsibilities and services will likely include, but will not be limited to: reviewing documentation developed by bond counsel and the financial advisor, and developing any additional necessary legal documentation; assisting with the issuance and sale of any debt instruments; issuance of a 10b-5 opinion; assisting in the preparation, development, and review of an official statement for any general obligation bond issue; and performing such other duties as are normally and customarily required of disclosure counsel. Disclosure counsel will also be expected to attend all meetings required of them associated with a bond issue.

NOTE: For the past 20+ years, Zions Bank Public Finance (“ZBPF”) (or its predecessors) has served as financial advisor (“FA”) to the State. In that role, ZBPF has prepared the first draft of the preliminary official statement (“POS”) and the official statement (“OS”) for general obligation bond issues of the SBC. ZBPF, working with disclosure counsel, has then made the revisions to drafts of the POS and the OS to put the POS and the OS into final form. The State Treasurer, who is authorized to retain an FA for the State, is currently in the process of selecting an FA for the next 3 years. It is known that several firms that are likely to submit proposals to serve as FA do not prepare drafts or the final versions of the POS or the OS, as ZBPF has been doing. Therefore, the firm will need to submit proposals that take into account the possibility that if appointed as disclosure counsel, the firm may be required to do the initial draft of the POS and OS, as well as prepare the final versions of the POS and OS, for general obligation bonds issued by the SBC.

ZBPF did not prepare the initial drafts or the final versions of the POS or OS for the revenue bonds issued by the SBC in 2010 for the BWR. Therefore, disclosure counsel may also be required to do the initial drafts and final versions of the POS and OS for revenue bonds issued by the SBC for the UDA.

REQUIRED CONTENTS OF PROPOSALS TO SERVE AS DISCLOSURE COUNSEL

Proposals must address the following criteria, which the Attorney General will use to select disclosure counsel:

- A. The ability of the firm to complete bonding transactions in a timely, professional manner. In evaluating this factor, the Attorney General will consider each of the following:
 - 1. The experience of the firm as bond counsel or disclosure counsel on general obligation bond and revenue bond transactions, including the drafting of initial and final versions of the POS and OS. (If the firm has recently submitted to us a proposal on another bond or note issue, the firm may refer to and incorporate any parts of that proposal into this proposal, updating information where necessary.)

2. The professional resources available to assist with bond issues, and the names and qualifications of the principal attorney(s) who would be assigned to work on the bond issue. At least one attorney who will participate must be a member in good standing of the Utah State Bar, and at least one attorney must be listed among the attorneys in the "Municipal Bond Attorney's Section" of The Bond Buyers' Municipal Marketplace (the "Red Book"). The proposal must state which attorney(s) would actually be providing most of the services. The firm may associate with other firms or attorneys to provide services as disclosure counsel, but primary use of local attorneys will be a positive element in evaluating this factor.
 3. The availability of the firm to complete work on the bond issues in a timely and professional manner.
- B. The fee structure and estimated costs for the legal services provided. The proposal must state whether the firm would expect to receive the proposed fee or any part of the proposed fee, or to be reimbursed for costs incurred, in the event bonds are not issued. PREFERENCE WILL BE GIVEN FOR PROPOSED FEES BASED UPON A SET FEE, A FEE SCHEDULE BASED UPON THE DOLLAR AMOUNT OF BONDS ISSUED, HOURLY RATES WITH A CEILING, OR SOME OTHER METHOD BY WHICH THE ISSUER WILL BE ABLE TO ASCERTAIN AT THE OUTSET OF A BOND ISSUE WHAT THE LEGAL FEES FOR DISCLOSURE COUNSEL WILL BE. The proposal must also state whether there would be a charge for future legal services incidental to the issuance of the bonds, and if so, what type of fee would be charged (e.g., hourly, no charge for first X number of hours, etc.).

In preparing its fee proposal, the firm should assume the following:

1. For general obligation bonds to be issued by the SBC:
 - a. All bonds will be sold via competitive bid.
 - b. In 2010, the SBC determines that during 2010, in one bond issue, it will issue part of the general obligation bonds authorized prior to 2010 but not issued. Disclosure counsel performs the services customarily performed by disclosure counsel to enable the SBC to issue the general obligation bonds. In providing services as disclosure counsel for the issuance of these bonds, disclosure counsel encounters no unusual circumstances which would justify an adjustment in fees.

- c. The 2011 General Session of the Legislature approves the issuance of a certain amount of general obligation bonds for new projects. The SBC determines that during 2011, in one bond issue, it will issue part of the bonds authorized prior to 2010 but not issued, and part of the bonds authorized by the 2011 Legislature. Disclosure counsel performs the services customarily performed by disclosure counsel to enable the SBC to issue the general obligation bonds. In providing services as disclosure counsel for the issuance of these bonds, disclosure counsel encounters no unusual circumstances which would justify an adjustment in fees.
- d. For each bond issue, there are no unusual real estate matters or other unusual circumstances which must be considered.

GIVEN THESE ASSUMPTIONS, PLEASE INDICATE WHAT THE FIRM'S FEES AS DISCLOSURE COUNSEL WOULD BE IN 2010, AND IN 2011 IF THE FIRM'S FEES WOULD DIFFER IN 2011 FROM WHAT THEY WOULD BE IN 2010, FOR BOND ISSUES, IN:

- (1) \$5 MILLION INCREMENTS FROM \$5 MILLION TO \$50 MILLION;
- (2) \$10 MILLION INCREMENTS FROM \$50 MILLION TO \$100 MILLION;
- (3) \$50 MILLION INCREMENTS FROM \$150 MILLION TO \$500 MILLION; AND
- (4) \$100 MILLION INCREMENTS FROM \$500 MILLION TO \$1.5 BILLION.

AS THE FIRM PREPARES ITS PROPOSAL, PLEASE NOTE NO FUNDS ARE AVAILABLE FROM THE STATE, THE ATTORNEY GENERAL'S OFFICE, OR THE SBC, FOR PAYMENT OF FEES OR COSTS IF BONDS ARE NOT ISSUED, NOR DO ANY OF THESE ENTITIES HAVE FUNDS TO PAY FOR CONSULTATION TIME IF BONDS ARE NOT ISSUED. The Attorney General, in consultation with the appropriate State officials, will allow for adjustments in disclosure counsel fees, if there are other unusual circumstances, and if funds are available from the bond issue(s).

Please also indicate any other factors that would affect the firm's proposed fees under the circumstances given above, e.g., "If there is a second or third bond issue during a year, our fees would be adjusted as follows: . . .". Do not indicate factors such as, "If the sale is negotiated, rather than competitively bid, our fee will adjust as follows: . . .". If the sale is a

negotiated sale, the Attorney General's office will negotiate the fee with disclosure counsel.

2. For revenue bonds to be issued by the SBC:

The fee structure and estimated costs for the legal services provided for \$1-2 M of revenue bonds. The firm may, if it wishes, break down its fee into increments, e.g., \$25,000 for \$0-1 million, \$35,000 for amounts above \$1 million up to \$1.5 million, and \$45,000 for amounts above \$1.5 million up to \$2 million.

The proposal must state whether the firm would expect to receive the proposed fee or any part of the proposed fee, or to be reimbursed for costs incurred, in the event bonds are not issued. PREFERENCE WILL BE GIVEN FOR PROPOSED FEES BASED UPON A FIXED FEE, A FEE SCHEDULE BASED UPON THE DOLLAR AMOUNT OF BONDS ISSUED, HOURLY RATES WITH A CEILING, OR SOME OTHER METHOD BY WHICH THE ISSUER WILL BE ABLE TO ASCERTAIN AT THE OUTSET OF A BOND ISSUE WHAT THE LEGAL FEES FOR BOND COUNSEL WILL BE. The proposal must also state whether there would be a charge for future legal services incidental to the issuance of the bonds, and if so, what type of fee would be charged (e.g., hourly, no charge for first X number of hours, etc.).

AS YOU PREPARE YOUR PROPOSAL, PLEASE NOTE THAT NO FUNDS ARE AVAILABLE FROM THE STATE OF UTAH, THE ATTORNEY GENERAL'S OFFICE, OR THE SBC FOR PAYMENT OF FEES OR COSTS IF BONDS ARE NOT ISSUED. The Attorney General, in consultation with the appropriate officials from the SBC, will allow for adjustments in disclosure counsel fees, if there are unusual or unforeseen circumstances that require significant additional services by bond counsel, and if funds are available from the bond issue.

3. For both general obligation bonds and revenue bonds:

As noted above, disclosure counsel may be required to assume the drafting of the initial drafts and final versions of the POS and OS. Therefore, if a firm's fee will be different depending on whether the firm, as disclosure, will charge a different fee if it must prepare the initial drafts and final versions of the POS and OS than if it does not, the firm should so indicate, and provide information for both sets of circumstances.

- C. The number of appointments of, and the total fees received by, the firm in the last three (3) years for bonding work (including note projects) on behalf of the State, the State Board of Regents, any of the State's colleges or universities, or the Utah Higher Education Assistance Authority.

OTHER MATTERS FOR CONSIDERATION

1. Firms may submit proposals to serve as bond counsel, as disclosure counsel, or both. **HOWEVER, THE ATTORNEY GENERAL WILL NOT SELECT THE SAME FIRM TO SERVE AS BOND COUNSEL AND DISCLOSURE COUNSEL FOR THESE APPOINTMENTS.** Therefore, firms should not submit any information for fees or other matters “if our firm is selected as both bond counsel and disclosure counsel”, since that is not an option.

2. As stated above, for the past several years, the State’s financial advisor has prepared the first drafts and final versions of the POS and OS for all general obligation bond issues by the SBC. As a result, the OS for general obligation bonds issued by the SBC is less than a year old. In the past, while it has obviously been necessary to change the description of the bonds in the prior year’s OS to provide details of the bonds to be issued, and charts have needed to be updated, few changes have been needed to be made to much of the prior year’s OS, such as those parts that describe the government of the State, its budgeting and appropriations processes, and its revenue sources. Thus it is expected that even if the FA selected by the State Treasurer does not prepare the first drafts or final versions of the POS and OS, disclosure counsel will not need to prepare the POS and OS from scratch.

A copy of the entire OS for the Official Statement for the State of Utah \$490,410,000 General Obligation Bonds, Series 2009C, and \$491,760,000 General Obligation Bonds, Series 2009D (Federally Taxable–Issuer Subsidy–Build America Bonds), which is the most recent OS for general obligation bonds issued by the SBC, may be accessed on the internet at <http://attorneygeneral.utah.gov/89.html>.

3. Should a key attorney in a firm leave that firm during the period of the firm’s appointment under this RFP, the Attorney General reserves the right, in his sole discretion, (a) to have the appointment follow the attorney to the attorney’s new firm, (b) to leave the appointment with the firm originally appointed, or (c) to appoint a new firm to fill the appointment for the remainder of the period.

4. As noted above, the State Treasurer is in the process of selecting a financial advisor for the State.

DEADLINE FOR SUBMITTING PROPOSALS

Written proposals must be received by the Utah Attorney General, c/o Bryce H. Pettey, Assistant Attorney General, 160 East 300 South, Fifth Floor, P. O. Box 140874, Salt Lake City, UT 84114-0874, **no later than 12:00 p.m. (Noon) on Tuesday, June 15, 2010.** The Attorney General reserves the right to accept or reject any or all proposals received after the due date, to accept or reject any or all proposals or any or all parts of a proposal, to waive minor defects or technicalities, and to request new proposals.

THE SELECTION PROCESS

In General

The Attorney General will select bond counsel and disclosure counsel based upon each of the criteria set forth above under the respective headings of **“REQUIRED CONTENTS OF PROPOSALS FOR BOND COUNSEL”** and **“REQUIRED CONTENTS OF PROPOSALS FOR DISCLOSURE COUNSEL”**. All criteria set forth under those headings are important, but the criteria in paragraph A under each heading will be given the greatest weight. Each of the subparagraphs of each paragraph A will be given equal weight, and the subparagraphs will be evaluated in the order they appear in each paragraph A.

A firm must first be determined to be qualified under paragraph A to perform the services described for bond counsel or disclosure counsel. After passing that threshold, the factors in paragraphs B and C will be considered. The lowest proposed fees will be an important factor in selecting bond counsel and disclosure counsel, but other factors will also be considered, and the firm submitting the lowest proposed fee will not necessarily be the firm that is selected.

The Attorney General may seek input from appropriate State officials and from prior issuers who have had experience with firms submitting proposals. Such input may be considered by the Attorney General in making the selection.

Oral Presentations

After reviewing the written proposals, the Attorney General may select bond counsel, disclosure counsel, or both at that time; however, the Attorney General reserves the option of selecting several of the top applicants for bond counsel and several of the top applicants for disclosure counsel (selected on the basis of the written proposals) to make oral presentations to supplement the information in the written proposals. The Attorney General will decide whether oral presentations are needed or desirable, based upon factors brought to the Attorney General's attention by the Attorney General's staff and other State officials, the amount of time available to hear such presentations, and the Attorney General's own schedule. The Attorney General may choose to have those oral presentations made to a panel of persons of the Attorney General's own choosing; if so, the Attorney General may or may not be a member of that panel. Information in those oral presentations, and any recommendations from a panel or panel members, may be considered by the Attorney General, along with the information in the written proposals, in making the final selection of bond counsel and disclosure counsel.

If the Attorney General decides oral presentations are needed or desirable, the firms selected after initial review of the written proposals will be contacted by the Attorney General's office, and arrangements will be made to have the firms make their oral presentations. After these presentations, the Attorney General will select bond counsel and disclosure counsel.

NOTICE OF SELECTION

After the Attorney General has selected the firms, the selected firms will be notified. If a firm the Attorney General has selected is unable or unwilling to accept the appointment, the Attorney General will select another firm based upon the same criteria used to select the first firm. After firms have been selected that are willing to, and do, accept the appointments under this RFP for bond counsel and disclosure counsel, a general announcement will be made to the public. It is anticipated bond counsel and disclosure counsel will be named no later than Friday, June 25, 2010. Interested persons can learn the name of the firm appointed by calling 801-366-0375 on Friday, July 2, 2010.

NON-DISCLOSURE OF REASONS FOR SELECTING FIRM APPOINTED AND OF INFORMATION IN PROPOSALS; POSSIBLE REQUIREMENT TO DISCLOSE

Utah Admin. Code R105-1 provides that the reasons for selecting the firms that are appointed will not be made available to anyone. However, like all other State agencies, the Attorney General's office is subject to the Government Records Access and Management Act ("GRAMA") (Chapter 2, Title 63G, Utah Code Ann. (West 2009, and as amended by the 2010 General Session of the Utah Legislature)). GRAMA makes most documents held by government entities in the state "public records," as defined in GRAMA. It is not yet clear just what effect GRAMA has upon proposals submitted in response to an RFP, such as this one. The Attorney General's office continues to analyze GRAMA for its effect on all written documents received by the Attorney General's office, including proposals received in response to an RFP, but all persons submitting proposals are on notice that the Attorney General may not be able to keep the information in the proposals confidential. **A firm desiring to protect the confidentiality of all or part of the contents of its proposal may wish to consider the applicability of Utah Code Ann. § 63G-2-309 (West 2009).**

FURTHER INFORMATION

A firm having questions relating to the business aspects of general obligation bonds or revenue bonds to be issued by the SBC during 2010 and 2011 may contact either Richard J. Ellis, State Treasurer, at 801-538-1042 or rellis@utah.gov, or David Damschen, Deputy State Treasurer, at 801-538-1042 or ddamschen@utah.gov. A firm is free – and indeed is encouraged – to contact either of these individuals directly with any questions the firm may have regarding the business aspects of the bond issues described above. A firm need not contact the Attorney General's office first before making inquiry of the Mr. Ellis or Mr. Damschen.

A firm having questions relating to this RFP, or relating to the Attorney General's process of selecting bond counsel, may contact Bryce Pettey of the Utah Attorney General's Office (telephone 801-366-0375; facsimile 801-366-0378; or e-mail at bpettey@utah.gov).